

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Lazaro DeJesus

v.

Detective Todd Grager, et. al.

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No.: 5:16-cv-04745

Jury Trial Demanded

**DEFENDANT TODD GRAGER'S MOTION TO DISMISS PLAINTIFF'S
AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(6)**

Defendant Todd Grager, by and through counsel, William J. Ferren and Associates, files this Motion to Dismiss Plaintiff's Amended Complaint as to Defendant Grager, and in support thereof states as follows:

1. On September 1, 2016, Plaintiff filed a Civil Rights Complaint against Todd Grager and others, asserting a malicious prosecution cause of action and a Monell Claim.

2. Defendant Grager filed a Motion to Dismiss this Complaint.

3. On November 25, 2016 Plaintiff filed an Amended Complaint.

4. In support of his Amended Complaint Plaintiff asserts that on October 4, 2011 he was on parole. See Paragraph 10 of Plaintiff's Complaint attached hereto and incorporated herein as Exhibit "A."

5. Plaintiff's "approved residence of record" was 443 West Orange Street, Apartment 2, Lancaster, PA. See Exhibit "A" paragraph 11.

6. On January 14, 2013 State Parole agents gained information that Plaintiff was living at 530 N. Plum Street, Apartment 9, Lancaster, PA and that he was selling drugs. See Exhibit "A" paragraph 12.

7. According to the Amended Complaint, the 530 N. Plum Street, Apartment 9, Lancaster, PA was leased by Sikia Miranda, Plaintiff's girlfriend. See Exhibit "A" paragraph 18.

8. According to the Amended Complaint, State Parole agents arrived at the 530 N. Plum Street, Apartment 9, Lancaster, PA, where they found Plaintiff and what "appeared to be an illegal substance" inside of the apartment. See Exhibit "A" paragraph 27.

9. "Upon finding what appeared to be an illegal substance, Defendant Agents contacted Detective Granger (Sic.) of the Lancaster County Drug Task Force." See Exhibit "A" paragraph 27.

10. Detective Grager reported to the residence, took possession of the drugs and charged Plaintiff with possession with intent to deliver and use and possession of drug paraphernalia. See Exhibit "A" paragraph 30.

11. The only modifications that Plaintiff made to his original Complaint can be found at paragraphs 28 and 29.

12. In Paragraph 28 of the Amended Complaint Plaintiff asserts that when Defendant Grager asked permission of Miranda to enter her apartment she denied consent to enter without a warrant. See Exhibit "A" paragraph 28.

13. In Paragraph 28 of the original Complaint Plaintiff asserted that it was unknown if Miranda gave Detective Grager permission to enter.

14. In paragraph 29 of Plaintiff's Amended Complaint Plaintiff asserted additional language as follows: "Due to Detective Granger's (Sic.) coercion of Miranda, Miranda under pressure that her property would be destroyed, involuntarily consented to the search. But for Detective Granger's (Sic.) coercion, coupled with the close proximity of multiple state actors in her home illegally, Miranda would not have consented to the search of her home.

15. Defendant Grager should be dismissed from this matter since he had probable cause to arrest Plaintiff.

16. Additionally Defendant Grager is entitled to qualified immunity.

17. During Plaintiff's criminal trial, the Honorable Jeffrey D. Wright suppressed certain evidence and the criminal charges against Plaintiff stemming from the January 14, 2013 arrest were Nol Prossed.

18. Defendant Grager had probable cause to arrest Plaintiff on January 14, 2013 because fellow law enforcement agents alerted him to the fact that illegal substances were found at that location.

19. Plaintiff's malicious prosecution claim against Todd Grager therefore fails as a matter of law.

WHEREFORE, it is respectfully requested that Officer Grager's Motion to

Dismiss be Granted.

Respectfully submitted,

WILLIAM J. FERREN & ASSOCIATES

By: /s/ Christine E. Munion

Christine E. Munion, Esquire

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Attorney for Defendant Todd Grager

VERIFICATION

I, Christine E. Munion, Esquire, state that the facts in Defendant Todd Grager's Motion to Dismiss Plaintiff's Amended Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) are true and correct to the best of my knowledge, information and belief. This Verification is made with knowledge of the penalties contained in 18 Pa. C.S.A. §4904, relating to unsworn verification to authorities.

By: /s/ Christine E. Munion

Dated: November 30, 2016

CERTIFICATE OF SERVICE

I, Christine E. Munion, Esquire, hereby certify that I have served upon all parties of record a true and correct copy of Defendant Todd Grager's Motion to Dismiss Plaintiff's Amended Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) this date by electronic filing with the court.

WILLIAM J. FERREN & ASSOCIATES

By: /s/ Christine E. Munion
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Attorney for Defendant Todd Grager

Dated: November 30, 2016